

PART XV of the SECURITIES AND FUTURES ORDINANCE (CAP. 571) (Disclosure of Interests)

Under Section 309 of the Securities and Futures Ordinance (Cap. 571), the Securities and Futures Commission, after consulting the Financial Secretary, publishes these guidelines for the exemption of listed corporations from all or any of the provisions of Part XV the Securities and Futures Ordinance

Securities and Futures Commission

Guidelines for the Exemption of Listed Corporations from Part XV of the Securities and Futures Ordinance (Disclosure of Interests)

1. Definitions

Terms that are defined in section 308 of the SFO and Schedule 1 to the SFO have the same meaning in these Guidelines. In addition :

“corporate insiders” means substantial shareholders, directors, shadow directors and chief executives of a listed corporation;

“Guidelines” means these guidelines made pursuant to Section 309(1) of the SFO;

“SFC” means the Securities and Futures Commission;

“SFO” means the Securities and Futures Ordinance (Cap. 571);

“Part XV” means Part XV of the SFO;

“Stock Exchange” means the Stock Exchange of Hong Kong Limited;
and

“substantial shareholder” means a person or corporation who has an interest in shares comprising 5% or more of a listed corporation’s relevant share capital.

2. Nature and Purpose of these Guidelines for Exemption

Category 1 – Dual listing

- 2.2 For some corporations, either already listed or seeking a listing, the principal share trading market in their securities exists or will exist on a stock exchange other than Hong Kong. In some cases either no share trading or only nominal trading will take place on the Stock Exchange. In other cases the corporate insiders of such corporations will be subject to statutory disclosure of interest obligations in another jurisdiction that are comparable to those of Part XV. Requiring compliance by these corporate insiders with Part XV may result in additional costs without contributing to an informed market for the shares of the relevant corporation.

Category 2 – Issuers of securities other than shares

- 2.3 A corporation that has any of its securities listed on the Stock Exchange is regarded as being listed and its corporate insiders come under disclosure obligations under Part XV even if shares in the corporation are not listed on the Stock Exchange. Requiring compliance by the corporation and its corporate insiders with Part XV may result in additional costs without contributing to an informed market for the securities that are listed.

Enabling provisions and general qualification

- 2.4 e

3.5 These Guidelines provide for complete or partial exemptions. Exemptions, whether complete or partial, may be made subject to such conditions as the SFC reasonably considers appropriate.

4. General Criteria for Exemption under section 309(2)

4.1 The SFC will take account of the following matters in deciding whether to grant an exemption for corporations with a dual listing (i.e. a Category 1 application) :

(i) the volume of the applicant corporation's worldwide share turnover (or in the case of a new applicant for listing, the anticipated turnover) that takes place on the Stock Exchange and on any other stock exchange or securities market;

(ii) the extent to which an applicant corporation's corporate insiders are subject to statutory disclosure requirements in any other jurisdiction that are comparable to those existing in Hong Kong; and

(iii) the reasons for the applicant corporation list12 292.0 i612 0 0ui2 161.9937 48

corporation will not be required to be filed with Hong Kong regulatory authorities.

- 5.2 The SFC will take into account all relevant facts and circumstances, including those matters set out in section 4 above, in considering an application for a complete exemption.
- 5.3 An applicant for a complete exemption under Category 1 must satisfy the SFC that only a nominal percentage of the average daily volume of its worldwide share turnover does, or is reasonably anticipated to, take place on the Stock Exchange. A nominal percentage will normally be 1% or less of the average daily volume of an applicant's worldwide share turnover. Average daily volume of worldwide share turnover shall be calculated on the basis of share turnover during the twelve month period immediately preceding the date of any application for exemption.
- 5.4 The SFC would not normally grant a complete exemption if the applicant corporation or its predecessor has raised capital, or if the applicant intends to raise capital, in Hong Kong. However, the fact that a corporation raises a pro-rata proportion of its capital in Hong Kong, for example through a rights offering or by way of a professional offering in Hong Kong that was part of a worldwide offering, would not automatically result in revocation of its exemption.
- 5.5 The SFC does not propose to revoke a complete exemption or modify or vary any conditions attached thereto unless there is a material change in circumstances. The SFC will give reasonable notice of its intention to revoke or vary a complete exemption. If, after an application for complete exemption is granted, a corporation's daily volume of share turnover on the Stock Exchange exceeds 1% of worldwide turnover calculated over a 12 month period then the exemption may be varied to a partial exemption, so that the corporation will be required to file any disclosures of interest made in another jurisdiction with the Stock Exchange.

6. Partial Exemption under section 309(2)

- 6.1 When a partial exemption is granted the corporation concerned and its corporate insiders will not be required to prepare registers, maintain records or file with Hong Kong regulatory authorities disclosure of interest reports pursuant to Part XV. An applicant corporation will be required to file with the Stock Exchange any disclosures of interests made in another jurisdiction as soon as is practicable. The Stock Exchange will publish these disclosures in the same way as those it receives from other listed corporations pursuant to Part XV.
- 6.2 Divisions 5, 11 and 12 of Part XV will continue to apply to the applicant corporation and its corporate insiders in the case of a partial exemption. Divisions 5 and 11 of Part XV sets out the powers of the listed corporation and the Financial Secretary to investigate listed corporation ownership and related

matters and Division 12 sets out the orders that can be made imposing restrictions on shares and equity derivatives.

- 6.3 The SFC will take account of all relevant facts and circumstances, including those set out at section 4 above, in considering an application for a partial exemption but will take particular account of:
- (i) The location of the principal trading market in an applicant corporation's securities. An application for a partial exemption is unlikely to be granted if 20% or more of the applicant corporation's average daily worldwide share turnover during a twelve month period immediately preceding the date of the application for exemption takes place on the Stock Exchange.
 - (ii) The nature and scope of any statutory disclosure of interest obligations that apply to an applicant corporation and its corporate insiders other than those imposed by Part XV. A partial exemption from Part XV will not normally be granted to an applicant corporation if no statutory disclosure of interest obligations comparable to those imposed by Part XV apply to its corporate insiders in any other jurisdiction.
- 6.4 The fact that a corporation has or proposes to raise capital in Hong Kong will not prevent it from obtaining a partial exemption from Part XV.
- 6.5 The SFC does not propose to revoke a partial exemption or modify or vary any of the conditions attached thereto unless there has been a material change in circumstances. Except in exceptional circumstances, the SFC will give six months notice to the listed corporation concerned of its intention to revoke a partial exemption.

Andrew Len Tao SHENG
Chairman
Securities & Futures Commission

26 March 2003